

CALIFORNIA COASTAL COMMISSION

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Commission Action:



Tu 7b & 7c

STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE

APPEAL NUMBERS: A-5-LGB-00-078 and A-5-LGB-00-079

LOCAL GOVERNMENT: City of Laguna Beach

DECISIONS: Approval with Conditions

APPLICANT: Five Star Resort, LLC **AGENT:** Athens Group

PROJECT LOCATION: 30801 Coast Highway, Laguna Beach (Orange County)

PROJECT DESCRIPTIONS: 1) Subdivision, master utilities and backbone infrastructure for the Treasure Island Destination Resort Community Project
2) Resort, condominiums and park areas in relation to the Treasure Island Destination Resort Community Project

APPELLANTS: Village Laguna, South Laguna Civic Association, Orange County CoastKeeper, John Gabriels and Eugene R. Atherton

SUMMARY OF STAFF RECOMMENDATION & ISSUES TO BE RESOLVED:

The staff recommends that the Commission, after a public hearing, determine that **A SUBSTANTIAL ISSUE EXISTS** with respect to the grounds on which appeals number A-5-LGB-00-078 and A-5-LGB-00-079 have been filed because the locally approved development raises issues of consistency with the City of Laguna Beach Treasure Island Destination Resort Community certified Local Coastal Program (LCP). Specifically, questions have been raised about whether the project approved by the City involves a larger scope of grading activities than allowed by the certified LCP, inconsistent with certified LCP policies and standards regarding blufftop grading and alteration of natural landforms. In addition, questions have been raised regarding whether the approved project ensures implementation of the adopted Resources Management Plan (RMP), as required by the certified LCP. At this time, all that is before the Commission is the question of substantial issue. If the Commission determines that a substantial issue exists, a De Novo hearing will be held at a subsequent meeting.

Other appeal contentions cited inconsistency with LCP policies related to water quality; public access and recreation; community character and design; scenic and visual resources and acreage inconsistencies. Staff recommends that the Commission determine that these contentions do not raise a substantial issue of consistency with the certified LCP.

At the time of this staff report, the applicant and the City of Laguna Beach have indicated disagreement with the staff recommendation, asserting that the approved project is in full compliance with the Treasure Island certified LCP.

PROCEDURAL NOTE:

The current staff report and recommendation analyzes both local approvals related to the project being appealed: A-5-LGB-00-078 for the subdivision, master utilities and backbone infrastructure and A-5-LGB-00-079 for the resort, condominiums and park areas. Although the staff report combines the analysis for the two local actions being appealed, the Commission must vote separately on the question of whether the appeals of each local action raises substantial issue. The two necessary motions are provided on page 3.

This staff report addresses only the question of substantial issue. If the Commission determines that a substantial issue exists, a staff report for a de novo permit will be prepared.

SUBSTANTIVE FILE DOCUMENTS:

- City of Laguna Beach Local Coastal Program (LCP) for Treasure Island Resort and Destination Community Project.
- Final Program Environmental Impact Report (FEIR) and Mitigation Monitoring Program for the LCP and Treasure Island Specific Plan adopted June 8, 1998.
- FEIR Addendum dated September 29, 1999.
- City of Laguna Beach Administrative Record for Coastal Development Permits 99-75 and 99-76.
- California Coastal Commission Adopted Revised Findings on the City of Laguna Beach Local Coastal Program amendment 1-98 for the Treasure Island Area of Deferred Certification as Approved by the Commission on November 6, 1998.

LIST OF EXHIBITS:

1. Vicinity Map
2. LCP Specific Plan Map
3. CDP Site Development Plan
4. Project Plans and Elevations
5. Copy of City of Laguna Beach "Notice of Final Local Action" for CDP No. 99-75
6. Copy of City of Laguna Beach "Notice of Final Local Action" for CDP No. 99-76
7. Copy of the Appeals by Village Laguna, South Laguna Civic Association, Orange County CoastKeeper, John Gabriels and Eugene Atherton
8. Figure 9.2-4 (Bluff Sections) of LCP
9. Conceptual Grading Plan and Conceptual Cut-Fill Plan
10. Approved Grading Plan
11. Depth of Cut-Fill Analysis Map
12. Law Crandall Consultation letter, dated February 2, 2000
13. Earthwork Quantity Calculations Map
14. Approved Drainage Plan
15. Figure 4.1.11 (Top of Bluff Exhibit) of Final EIR
16. Limit of Grading vs. 45% Blufftop Designation
17. Water Quality Measures
18. Figure 10.2-2 (Public Access and Recreation Plan) of LCP
19. City of Laguna Beach Correspondence
20. Supplemental Information from Appellants

I. STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE:

A. MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE WITH REGARD TO APPEAL NO. A-5-LGB-00-078

The staff recommends that the Commission make the following motion and adopt the following resolution:

Motion: *I move that the Commission determine that Appeal No. A-5-LGB-00-078 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff Recommendation:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

Resolution to Find Substantial Issue:

The Commission hereby finds that Appeal No. **A-5-LGB-00-078** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.

B. MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE WITH REGARD TO APPEAL NO. A-5-LGB-00-079

The staff recommends that the Commission make the following motion and adopt the following resolution:

Motion: *I move that the Commission determine that Appeal No. A-5-LGB-00-079 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff Recommendation:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

Resolution to Find Substantial Issue:

The Commission hereby finds that Appeal No. **A-5-LGB-00-079** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.

II. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. APPEAL PROCEDURES

i. Appealable Development

Section 30603 of the Coastal Act states:

- (a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*
 - (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*
 - (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

Sections 30603(a)(1) and (2) of the Coastal Act establishes the project site as being appealable by its location between the sea and first public road and within 300 feet of the bluff edge (Exhibit 1).

ii. Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) *The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.*

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the

substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing will be scheduled at the same hearing or a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

The grounds for the current appeal include contentions that the approved development does not conform to the standards set forth in the certified LCP regarding landform alteration; marine resources; water quality; community character & design; and public access and/or the public access and recreation policies set forth in the Coastal Act.

iii. Qualifications to Testify before the Commission

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

At the De Novo hearing, the Commission will hear the proposed project de novo and all interested persons may speak. The De Novo hearing will occur at a subsequent meeting date. All that is before the Commission at this time is the question of substantial issue.

B. LOCAL GOVERNMENT ACTIONS

CDP No. 99-75 (A-5-LGB-00-078)

On February 15, 2000, the City of Laguna Beach City Council held a public hearing on the proposed project. At the conclusion of the public hearing, the City Council approved with conditions local CDP No. 99-75 for the subdivision, master utilities and backbone infrastructure for the Treasure Island development, finding that the project, as conditioned, conformed to the City's certified LCP for Treasure Island. The action by the City Council did not involve a local appeal. The local appeal process has now been exhausted. The City's action was then final and an appeal was filed by five parties (3 organizations and 2 individuals) during the Coastal Commission's ten- (10) working day appeal period.

CDP No. 99-76 (A-5-LGB-00-079)

On January 11, 2000, the City of Laguna Beach City Council held a public hearing on the proposed project. At the conclusion of the public hearing, the City Council approved with conditions local CDP No. 99-76 for the resort, condominiums and park areas associated with the Treasure Island development, finding that the project, as conditioned, conformed to the City's certified LCP for Treasure Island.

The local action involved an appeal of the Joint Planning Commission and Design Review Board approval of CDP No. 99-76 and Design Review No. 99-206 on December 15, 1999. The approval was upheld and the local appeal process has now been exhausted.

Pursuant to Condition No. 1 of CDP 99-76, a subsequent approval by the Joint Planning Commission and Design Review Board was required before the City Council's approval became final. At the conclusion of the public hearing held on February 16, 2000, the Joint Planning Commission and Design Review Board granted approval of CDP 99-76. Therefore, the City's action was then final and an appeal was filed by five (5) parties (3 organizations and 2 individuals) during the Coastal Commission's ten- (10) working day appeal period.

C. APPELLANTS' CONTENTIONS

The Commission received notices of final local action on CDPs 99-75 and 99-76 on February 17, 2000 (Exhibits 5 and 6). CDP 99-75 (assigned appeal no. A-5-LGB-00-078) approved the subdivision, master utilities and backbone infrastructure and CDP 99-76 (assigned appeal no. A-5-00-LGB-00-079) approved the construction of the resort, condominiums and park areas.

By March 3, 2000, within ten working days of receipt of the notices of final action, five (5) parties had appealed the local actions on the grounds that the approved project does not conform to the requirements of the certified LCP (Exhibits 7a-e). The three organizations appealed both local actions, while the two individuals appealed only CDP No. 99-76 for the construction portion of the project.

The appellants contend that the proposed development does not conform to the certified LCP for the reasons discussed on the subsequent pages. The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs., Title 14, Section 13115 (b)). In previous decisions on appeals, the Commission has been guided by the following factors: whether the appellants' contentions regarding the local government action raise significant concern in terms of the extent and scope of the approved development, the factual and legal support for the local action, the precedential nature of the project, whether a significant coastal resource would be affected, and whether the appeal has statewide significance.

The validity of the appellants' contentions will be evaluated in the Substantial Issue Analysis Section, which begins on page 10.

Village Laguna

Village Laguna contends that the Treasure Island Development, as approved by the City, is inconsistent with the following Coastal Act provisions:

- **Section 30213, 30221 and 30222**, as the project provides few low-cost visitor and recreational facilities and devotes an “*unnecessarily high proportion of the land*” to private residential development;
- **Section 30251**, because the project will 1) obstruct views from PCH, 2) does not minimize alteration of natural landforms, 3) is not visually compatible with the character of the surrounding area, and 4) will not restore and enhance the visual quality of the area;
- **Section 30253**, as the project will substantially alter natural landforms along bluffs and cliff that are prone to failure. Appellants also contend that the project does not protect the characteristics of the area as a “special community” and is inconsistent with the scale and character of the surrounding area; and
- **Section 30231**, identifying concerns that the water quality measures do not adequately address runoff during the rainy season.

The appellants also contend that conformance with **Sections 30230 and 30240** is not ensured, as the development has the potential to degrade the marine life habitat.

Additionally, Village Laguna asserts that that the project is inconsistent with the following LCP regulations and standards:

- **Figure 8.2.2**, because there are acreage inconsistencies between the Land Use Summary and the actual acreage amounts approved in the CDP;
- **Policy 9.1.2.1**, as the City has not committed to monitoring the marine life reserve;
- **Figure 9.2-4**, because the exhibit does not show that grading is to occur on the bluff face;
- **Policy 9.3.1.1 a**, as the grading activities now required to carry out the project are not the “*minimal amount...necessary*,”
- **Policy 10.7.2**, due to the fact that 1) it was not proposed in the LCP to remediate fill along the bluff and 2) the LCP indicates that cut and fill quantities will be balanced to the extent practicable;
- **Figure 10.7.2**, since the conceptual grading plan did not show grading over the edge of the top of the bluff as is now being proposed;
- **Policy 10.7.3**, as the grading export quantities were originally anticipated to be between 3,000 and 40,000 cubic yards and are now estimated at 170,000 cubic yards;
- **Policy 10.8.1**, because the project will remove 40 of the 95 existing Eucalyptus trees, which were expected to be preserved;
- **Policy 14.2.1**, as the development is inconsistent with the village scale and pedestrian orientation intent of the LCP;
- **Policy 14.2.2**, because 1) a single style of architecture, rather than a “mix of styles and forms” has been chosen, and 2) manufactured materials will be used, rather than natural stone;

- **Policy 14.4**, as the development will require the topography to be altered and “what stepping occurs is minimal.” Also, landscaping areas are restricted by structures;
- **Policies 14.4.2, #4**, the hotel facade is continuous along Coast Highway and the northern edge of the site;
- **Policy 14.3.2**, the public access path to the beach is inordinately wide and will be used by hotel service and maintenance vehicles and emergency access vehicles, creating conflicts between pedestrians and vehicles.

In their appeal, Village Laguna also suggests that grading of the bluff could trigger bluff failure beyond the limits of grading, which would require further remediation of the bluff and construction of bluff stabilization devices. In addition, the appellants state that the bluff-face grading lowers the elevation at the top of the bluff, thereby increasing the bluff-top area. They assert that this grading creates additional acreage for residential development inland of the park. They also indicate that this decreases that amount of total park acreage (through loss of bluff face) and assert that the Bluff-top park area should be increased to compensate for the loss of bluff face area.

Village Laguna submitted additional information to clarify their appeal contentions on March 16th, 17th and 23rd, 2000 (Exhibit 20).

South Laguna Civic Association

The South Laguna Civic Association had appealed the Treasure Island Development on the grounds that the project approved by the City is inconsistent with the following Coastal Act sections:

- **Section 30213**, as the project does not provide adequate lower cost visitor and recreational facilities, such as picnic tables and an underwater park;
- **Section 30251**, since the project will 1) significantly alter natural landforms through the proposed grading of the bluff face and the removal of 170,000 cubic yards of soil and 2) not be compatible with the character of surrounding areas;
- **Section 30230**, because additional impacts of the development on the marine habitat will further degrade the environment. Appellants also assert the project’s marine resources component should be redesigned; and
- **Section 30231**, as the project’s water quality measures do not incorporate the Best Available Technology (BAT), and no agreement has been reached with the local sanitation district to accommodate proposed diversion of nuisance flows.

The South Laguna Civic Association also submitted a supplemental letter citing inconsistencies with the certified LCP on March 22, 2000 (Exhibit 20).

Orange County CoastKeeper

The Orange County CoastKeeper contends that the project is inconsistent with the following Coastal Act Sections:

- **Section 30230**, as the marine resource component should include a more comprehensive restoration plan for marine habitat,
- **Section 30231**, because the storm runoff standards incorporated into the project are not adequate and BAT's must be mandated for the project.

Eugene Atherton

Dr. Atherton is appealing the approved project on the grounds that it conflicts with the following LCP provisions:

- **Policy 9.7.1**, as there is a deficit in open space acreage provided;
- **Policy 4.2.3**, because 1) parking spaces are in a Caltrans right-of-way subject to removal for widening of Coast Highway, 2) parking spaces are being eliminated adjacent to the resort, and 3) the parking structure is inadequate;
- **Policy 4.2.2**, as there is not an accessway through the residential development area;
- **Policy 3.1.2 (a)**, as removal of Goff Island platform may negatively affect the beach;
- **Policy 3.1.2 (b)**, since defacement of bluffs will mar view of bluffs, Promontory Point and Goff Island from Coast Highway;
- **Policy 3.1.2 (c)**, because inadequate storm drainage system will endanger the project site, coastal resources and safety of the public.

Dr. Atherton also contends that the project conflicts with the following Coastal Act section:

- **Section 30222**, as use of the hotel and resort bungalows is not limited to visitor use, and therefore may be used as residences.

John Gabriels

Mr. Gabriels has appealed the project approval on the grounds that a greater proportion of the site should be dedicated to hotel use (rather than residential). Additionally, he contends that the City of Laguna Beach does not enforce parking regulations and is concerned that the on-site parking will not be available to the public. Mr. Gabriels is also concerned that the public beach may be fenced off.

D. SUBSTANTIAL ISSUE ANALYSIS

i. Project Description, Location and Background

The City's approval of Coastal Development Permits 99-75 and 99-76 allows the following development within the Treasure Island certified LCP area:

- 1.) Subdivision, master utilities and backbone infrastructure for the Treasure Island Destination Resort Community Project, and
- 2.) Construction of the resort, condominiums and park areas in relation to the Treasure Island Destination Resort Community Project

The certified LCP area is located in the southern portion of the City of Laguna Beach on the seaward side of Pacific Coast Highway just north of Aliso Beach (Exhibit 1). The approximately 30-acre site was previously used as a private 268 space trailer park. The site has been vacant since 1997.

On November 6, 1998, the Treasure Island Local Coastal Program (LCP) was approved as a project specific amendment to the City of Laguna Beach Local Coastal Program. The site was previously an Area of Deferred Certification pending the resolution of public access concerns. The certified LCP allows for development of the site with a resort complex consisting of a resort center on 10.63 acres with 200-275 visitor-serving accommodations provided in a hotel, resort villas, and residence villas (condominiums). The certified LCP also allows for future residential development of up to 18 single-family residences and provides public benefits, including the dedication of nearly 14 acres into public ownership and the enhancement of public access throughout the site (Exhibit 2).

As set forth in the Treasure Island LCP, all development within the project site is subject to City approval of a Master and/or Project-level coastal development permit (CDP). The recently approved CDPs were intended to fulfill this requirement. CDP 99-75 is considered the Master CDP, providing the necessary information to permit the grading, construction of master utilities and backbone infrastructure improvements, and the subdivision of the site into large parcels for financing and/or conveyance to the City and/or other public agencies. CDP 99-76 is considered the Project-level CDP, providing construction-level detail for the resort and its associated residential and public uses (Exhibits 3 & 4).

ii. Analysis of Consistency with Certified LCP and Public Access Section of the Coastal Act

As stated in Section A (iii) of this report, the local CDP may be appealed to the Commission on the grounds that it does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. The Commission must assess whether the appeal raises a substantial issue as to the project's consistency with the certified LCP or the access policies of the Coastal Act.

In making that assessment, the Commission considers whether the appellants' contentions regarding the inconsistency of the local government action with the certified LCP raise significant issues in terms of the extent and scope of the approved development, the support for the local action, the precedential nature of the project, whether a significant coastal resource would be affected, and whether the appeal has statewide significance.

In the current appeals of the Treasure Island Development, the appellants contend that the City's approval of the project does not conform to various provisions of the certified LCP and requirements set forth in the Coastal Act. Not all of the contentions raised can be considered valid appeal arguments, as the grounds for an appeal are limited to an allegation that the development does not conform to the certified LCP or the public access policies of the Coastal Act. Where Coastal Act sections are directly incorporated into the text of the Treasure Island LCP, the appeal contention is considered valid. However, many of the appellants' contentions cite project inconsistency with Coastal Act issues unrelated to public access that have not been incorporated into the LCP. Therefore, grounds for appeal that rely on Coastal Act sections that have not been incorporated into the LCP and/or do not reference specific LCP policies are considered invalid.

For clarification, the appellants' contentions have been grouped into the following categories: Valid and Invalid. Within the Valid Contentions Section, the appeals are determined to either raise "Substantial Issue" or "No Substantial Issue." Of the valid appeal contentions raised, Commission staff has recommended that the Commission find that a substantial issue exists with respect to two (2) of the grounds on which the appeals have been filed—Grading and Landform Alteration and Marine Resources. Staff has also recommended that the Commission find that no substantial issue exists with regard to Water Quality, Community Character and Design, Public Access and Recreation, Scenic and Visual Resources, and Acreage Inconsistencies. Invalid contentions are addressed on page 31 of the current staff report.

iii. Valid Contentions

Those contentions determined to have valid grounds for appeal are included in the subsequent section. Section (a) describes those contentions that are found to raise a substantial issue and Section (b) addresses those which are not found to raise substantial issue with the Treasure Island LCP and public access provisions of the Coastal Act.

a.Substantial Issue

The following appeal contention raises a substantial issue of consistency with the regulations and standards set forth in the certified LCP.

Grading and Landform Alteration

Section 3.2 (Physical Resources Policies) of the Treasure Island LCP sets forth geotechnical policies and includes technical information related to mitigation of geologic hazards and implementation of the Land Use Plan. The policies address soil

conditions, existing artificial fill on the site and the stability of bluffs within and adjacent to the LCP area.

Policies 3.2.2-1 through 3.2.2-10 specify the required blufftop setbacks and identify the need for remediation of areas of artificial fill. Those LCP policies which have been raised in the current appeals include:

- Policy 3.2.2-4 Development above the coastal bluff shall be engineered to ensure that surface/subsurface drainage does not contribute to erosion or adversely affect the stability of the bluff. Any minor residual effects related to storm drainage improvements shall be mitigated by recontouring and revegetating to obtain a natural landform appearance.*
- Policy 3.2.2-5 Any bluff areas requiring landform and remedial grading and/or slope stabilization (e.g., to provide ADA-compliant coastal access that is safe for the disabled) shall be recontoured and revegetated with native and drought-tolerant plant material to obtain a natural landform appearance.*
- Policy 3.2.2-6 Development, including Bluff-top Park improvements adjacent to the bluff, shall be located and designed to minimize the alteration of the existing landform and the construction of artificial devices that, except during the demolition of the existing trailer park and initial mass and/or remedial grading, would substantially alter existing landforms, and to avoid and discourage people from leaving designated areas and paths to climb on the bluffs.*
- Policy 3.2.2-7 Bluff stabilization and remediation of areas of existing artificial fill associated with historic mobile home development, ramp construction, movie set construction, piers and slabs along the shoreline, and other previous grading and development, whether legally permitted or not, shall be allowed if otherwise the fill poses a public health and/or safety risk, if bluff stabilization/remediation is designed to minimize landform alteration, and if the bluff will be restored to a natural appearance through contour grading and landscaping consisting of native and drought-tolerant vegetation.*

In addition, the Flood Control and Hydrology Policies of Section 3 contains the following policy which also relates to the subsequent grading discussion:

- Policy 3.2.2-16 The Resort Villas area of the site shall generally be graded to direct flow toward local street and away from the bluff. Sites that are too low to drain to the street shall be required to provide a private drainage system designed to protect and minimize significant adverse impacts on the marine*

environment and stability of the bluffs in conjunction with the City's review of the project-level CDP for the Resort Villas.

Chapter 9 (Resource Management Program) of the LCP outlines objectives and criteria to implement the policies contained in Chapter 3 (Resource Protection Policies) discussed above. The Resource Management Program, or RMP, provides requirements and regulations to serve as the Implementing Actions Program (IAP) for the Land Use Plan (LUP). The appellants challenge conformance with the following RMP provisions:

Section 9.1.2-2 Create a public Bluff-top park that protects the bluff face and bluff top resources while offering passive recreation and view appreciation of the coastal/marine resources from the top of the terrace.

Section 9.3.1-1a Grading—Grading activities within the coastal bluff shall be limited to that which is necessary to implement the Specific Plan, to remove the existing trailer park, to restore and protect a natural landform appearance within the disturbed area, to provide coastal access improvements as set forth in Section 11.6, to install required drainage and other backbone infrastructure improvements as set forth in Section 10.6, and to undertake a minimal amount of remedial grading necessary to undertake the above-referenced restoration/protection, public access ramp construction, and drainage improvements in such a way that will minimize the visual effect on the existing bluff landform.

Chapter 10 (Resort Development Concept) provides similar implementation provisions. The purpose of the Resort Development Concept is to conceptually describe the physical design and engineering of the project in terms of major public facilities and resort areas within the site. Sections 10.7.2 and 10.7.3 address the Landform Grading Objectives and the Conceptual Grading Plan for the proposed development. Excerpts from Chapter 10 will be provided where appropriate in the subsequent findings.

The appellants contend that the approved project conflicts with regulations set forth in Chapters 3, 9 and 10 of the certified LCP as they relate to landform alteration, bluff grading and site grading. They also reference inconsistencies with Coastal Act Section 30253, which deals with landform alteration. However, because Section 30253 is not directly incorporated into the LCP, this contention is considered invalid. The following section addresses the appellants' concerns as they relate to Extent of Grading, Grading Quantity, and Blufftop Delineation.

Extent of Grading

The appellants contend that the approved project is in conflict with LCP Objective 9.1.1-2 (see above), which states *"create a public bluff-top park that protects the bluff face and bluff-top resources,"* as the current project involves grading of the bluff-top and bluff face. The appellants also assert that the project conflicts with Figure 9.2-4, which depicts a section of the bluff-top and bluff-face and shows the bluff-face as

“natural revegetated slope” (Exhibit 8). The figure does not indicate that grading of the bluff face or Bluff-top Park area is to occur.

Figures 10.7-2 and 10.7-3 of the LCP also provide a “Conceptual Grading Plan” and a “Conceptual Cut-Fill Map” (Exhibits 9a and 9b). Again, these figures do not show the limit of grading extending beyond the bluff face or within the Bluff-top Park area. However, as approved by the City, the project involves grading throughout the Bluff-top Park and beyond the top of bluff, as shown on the approved Grading Plan (Exhibit 10). While some areas will only be graded from 0-5 feet, up to 10 feet of cut maximum will occur and grading will extend along the entire bluff top, as shown in Exhibit 11.

The appellants also assert that the LCP did not contemplate that development would involve remediation of fill areas along the bluff except in the area of the new coastal access ramp down to the beach. Subsection 2 (Remedial Grading) of Section 10.7.3 (Conceptual Grading Plan) states the following:

“Areas within the existing mobile home park that are constructed on historic fills, unstable alluvium, or geologic units, or that are otherwise determined to be unsuitable as a geotechnical foundation for resort development will be remediated to current professional engineering standards as approved by the State and City of Laguna Beach. Figure 10.7.4 depicts areas which may require remedial grading.

However it is not proposed to remediate fill areas along the existing bluff except in the area of the new coastal access ramp. Remedial grading in the area will be required for public safety and welfare. Also, because the Blufftop Park will replace trailer pads and other surface/subsurface construction along the bluff, some remediation and restoration of these areas will be required to provide a public park site that can be dedicated to the City of Laguna Beach in a reasonably safe and natural-appearing condition.”

As stated above, grading was not to occur beyond the top of bluff, except for construction of the ADA compliant ramp. The appellants note that the applicant’s geologists have provided recent reports which cite the instability of the bluff-top as a reason to remove parts of it. However, the appellants assert that the LCP makes it clear that the instability of the sediments was considered in the original development proposal and therefore, the extent of grading should not be allowed to extend beyond the point which is approved by the certified LCP.

The appellants also contend that grading of the bluff face may trigger bluff failure. They are concerned that grading would “*precipitate massive removal and recompaction and replacement of the bluffs with 2:1 slopes or artificial bluff retention devices.*” They claim that grading along the bluff face lowers the elevation at the top of bluff, thereby increasing the bluff-top area. They state that this increase in bluff top area enlarges the development area inland of the park, when instead it should be allocated as additional public parkland. (This issue will be addressed in the section entitled Acreage Inconsistencies, on page 28 of the current staff report.)

In responding to the appellants’ contentions, the City states that grading of the bluff area was always considered necessary for the remediation of the former mobile home

sites, including the removal of existing basements and decks along the bluff. The City points out that the Conceptual Grading Concept of Chapter 10 of the LCP describes the existence of unstable fill material and justifies the need for removal. As stated in Section 10.7.1, History of Site Grading,

As of today, virtually all of the interior areas of the mesa between Coast Highway and the bluffs has been cut or filled between 1 to 20 feet. In some cases this grading does not meet contemporary City standards and will need to be remediated if the site is to be redeveloped.

Additionally, the applicant's representative (Athens Group) has stated that it was originally anticipated that the Bluff-top Park could be left in a natural, unaltered state. However, at the project-specific design level, it was determined that grading of the bluff-top area was necessary in order to provide a safe and usable park. Recent geotechnical reports justify the need for the additional grading, which the City Council considered in their final approval of the project (Exhibit 12). Specifically, the geotechnical review by Law Crandall dated February 2, 2000 states the following:

"We understand that construction of a walkway near the top of the bluff is currently proposed and that it will primarily be for pedestrian use, but will also be used occasionally by emergency vehicles. As part of the grading for the site, it is proposed to lower the grade near the top of the bluffs in some areas.

For the support of the walkway, we recommend that all of the existing fill beneath the roadway be excavated. To reduce erosion of soils on the bluff, it is recommended that in some locations, the fill soils be removed. In addition, removal of the fill soils will increase global stability of the bluff by reducing the weight on top of the natural materials."

The local record contains no evidence that an evaluation was carried out to determine that the approved grading plan included the minimum amount necessary for remediation and restoration purposes. However, information has since been provided which indicates that the *"grading plans have been prepared to remove the minimum amount of artificial fill near the edge of the bluff"* (Exhibit 19, Letter from Law Crandall dated March 24, 2000). Some of the approved blufftop grading will occur in areas that were not previously developed with mobile homes. Thus, although the LCP does recognize that there would be some remediation and restoration grading within the park site in areas of previous mobile home development, substantial issues are raised regarding whether the amount of grading approved by the local permits goes beyond what is considered "remediation and restoration."

The applicant and City assert that all areas of existing fill along the bluff, whether previously developed with mobile homes or not, must be removed to ensure safety. They admit that the extent of the required grading was not fully understood until the project-level design had been finalized. However, the City asserts that Chapter 10 of the LCP is a description of a "conceptual" resort development project prepared two years ago and contends that the approved project is simply a refinement of the conceptual plan.

The applicant has also indicated that grading was required at the project-level to accommodate public requests to decrease project height. The local record indicates

that view issues were a primary consideration throughout the local hearing process. The design of the project was modified to lower building pad elevations, thereby providing greater public and private viewing opportunities from Coast Highway and adjacent development. Consequently, much of the decrease in building heights was accomplished through increased grading and the export of material from the site. A lower, terraced project has been created to accommodate the height limitations and view provisions of the surrounding area. However, while the Coastal Act encourages the protection of scenic resources, it must be accomplished in a manner that also minimizes the alteration of existing landforms.

The Commission recognizes that the extent of grading identified in the LCP was considered “conceptual;” however, a significant modification and expansion of the originally approved “concept” in the LCP has occurred. Consequently, the grading plan can no longer be found in substantial conformance with the plan as approved in the certified LCP.

Quantity of Grading

The appellants contend that Section 9.3.1, Bluff Preservation Requirements, of the LCP states that grading activities within the coastal bluff shall be limited to *“a minimal amount of grading necessary to undertake the above-referenced restoration/protection, public coastal access ramp construction, and drainage improvements in such a way that will minimize the visual effect on the existing bluff landform”* (see p. 13 for full text). They contend that the approved development requires extensive grading of the bluff, which can not be considered *“minimal.”*

As approved by the City, the project involves approximately 24,000 cubic yards of cut within the Bluff-top Park area and approximately 5,800 cubic yards of cut along the bluff face (Exhibit 13).

It should be noted that grading quantities are not normally included at the LCP level; however, because the Treasure Island LCP was a project-specific LCP, approximate earthwork quantities were provided. The original grading operations were estimated to *“generate approximately 105,000 cubic yards of cut and 65,000 cubic yards of fill, exclusive of grading required to remediate any uncompacted fills or geologically unstable areas within the interior of the historic trailer park.”* However, as approved by the City, CDP 99-75 indicates that grading will *“entail approximately 230,000 cubic yards of mass earthwork (including remedial grading). Grading operations are estimated to generate approximately 200,000 cubic yards of cut and 30,000 cubic yards of fill.”* The Commission recognizes that the amount of remedial grading was never identified at the LCP level, therefore the above quantities can not be compared with total accuracy. Nevertheless, the appellants’ contentions raise substantial issues of conformity with the grading limitations of the certified LCP.

The appellants also claim that the approved development is inconsistent with Sections 10.7.2 (Landform Grading Objectives) and 10.7.3 (Conceptual Grading Plan) of the certified LCP. These sections address the estimated earthwork quantities and the limits of grading. The LCP Conceptual Grading Policy indicates that the development will *“balance cut and fill quantities to the extent practicable to reduce the truck traffic that will be generated by grading operations”* and that *“actual export of between 3,000 and 40,000 cubic yards”* is anticipated. However, the appellants assert that grading export

quantities have increased to 170,000 cubic yards. This will require 12,570 two-way truckload trips.

The City and applicant assert that some of the bluff top grading is necessary for drainage purposes, as well as slope stability. The drainage system has to be designed so as to direct flows away from the bluff face and toward the proposed catch basins, as required by Policy 3.2.16 of the LCP (Exhibit 14). However, the amount of grading proposed at the subject site exceeds the minimum necessary for drainage purposes only. For purposes of drainage, a minimum two (2) percent slope is required. While the LCP does allow for remedial grading to direct drainage away from the bluff, the quantity of cut material allowed in the CDP raises substantial issues of consistency with the drainage policy provided in the LCP.

Top of Bluff Delineation

As defined in the certified LCP, the “top of bluff” is the point of the slope profile where the gradient of the ground surface exceeds 45 percent (24 degrees). This definition is illustrated in Figure 4.1.11 of the FEIR for the Treasure Island Destination Resort Community (Exhibit 15). The LCP definition differs from that provided in the City Municipal Code. As defined in City Municipal Code 25.50.004, “an ‘oceanfront bluff’ is an oceanfront landform having a slope of forty-five degrees or greater from horizontal whose top is ten or more feet above mean sea level.”

The local record evidences that the geotechnical review used in the City’s approval of the project improperly utilized the City Municipal Code bluff top definition, rather than the LCP definition. As shown in Exhibit 16, the limit of grading will extend beyond what is defined as “top of bluff” in the certified LCP. Therefore, the City’s approval of the project using an inaccurate delineation of top-of-bluff raises a substantial issue with the policies of the certified LCP.

Conclusion of Grading and Landform Alteration Analysis

As stated previously, the Commission considers whether the appellants’ contentions regarding the local government action and its consistency with the certified LCP raise significant concern in terms of the extent and scope of the approved development, the support for the local action, the precedential nature of the project, whether a significant coastal resource would be affected, and whether the appeal has statewide significance. As discussed above, the “extent and scope” of the approved development differ from that approved by the certified LCP and a “significant coastal resource” (the coastal bluffs) will be affected. Additionally, a question of bluff-top delineation remains, which may affect future grading activities. Therefore, the City’s approval raises a substantial issue of consistency with the approved LCP regarding the extent and quantity of grading proposed

Although grading may be required to create a “safe, usable park” along the bluff edge and to remediate the mobile home sites, as the applicant indicates, the fact remains that the LCP did not specifically address such a possibility and did not allow for such a substantial increase in the amount or extent of grading operations. In fact, the LCP excludes the Bluff-top Park and much of the bluff face from its Conceptual Grading Plan. LCP text also excludes the Bluff-top Park from the area that would require remedial grading (except for the area of the ADA compliant ramp).

The Commission recognizes that the LCP allows for some amount of remedial grading in the areas of existing fill. However, areas of existing fill were known at the time of LCP certification and still not included in the original grading plan. This raises a question as to the amount of newly proposed grading that can now be considered "remedial."

The regulations and policies set forth in the Treasure Island LCP require that minimal landform alteration occur and limit the amount and location of grading allowed along the bluff top and bluff face. At the time the project was modified to the point that the location and quantities of grading were determined to be significantly different from those approved in the certified LCP, an amendment to the originally-approved LCP was warranted.

In their consideration and certification of the LCP amendment for Treasure Island, the Commission considered the information provided in the Final Environmental Impact Report (FEIR), approved by the City Council in June of 1998. The FEIR addressed the site conditions and discussed the proposed grading activities required for the development of the Treasure Island site. The change in earthwork quantities at the project level triggered the preparation of an Addendum to the FEIR in September of 1999. The City then determined that the conditions and mitigation measures of the FEIR were sufficient to mitigate any potential impacts and accepted the Addendum. However, the Commission never had the opportunity to review the updated grading information and/or supplemental environmental analysis. As such, the project approved by the City in February 2000 raises a substantial issue of consistency with the LCP approved by the Commission in November 1998.

For all of the reasons stated above, the Commission finds that the City's approval of CDP 99-75 and CDP 99-76 raises a substantial issue of consistency with the grading and landform alteration regulations set forth in the certified LCP.

Marine Resources

Section 3.1 of the Treasure Island certified LCP sets forth general marine resources policies for the Treasure Island development. Sections 30230, 30231 and 30235 of the Coastal Act are directly incorporated within this section of the LCP.

Policy 3.1-1 incorporates Section 30230 of the Coastal Act, which states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Policy 3.1-2 incorporates Section 30231 of the Coastal Act, which states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of

waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Policy 3.1-3 incorporates Section 30235 of the Coastal Act, which states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

The following policies are also provided in Section 3 of the LCP, supplementing those established in the Coastal Act:

Policy 3.1.2-5 The redevelopment of the LCP shall serve, where possible, to improve conditions on the site and adjacent marine resource areas. To this end, the RMP shall provide for the protection of biological productivity and water quality within the LCP area.

Policy 3.1.2-6 Propose to the State Fish and Game Commission that it designate a Treasure Island Marine Reserve from the shoreline seaward out to 1,200 feet offshore and propose its candidacy for Ecological Reserve status to the State Department of Fish and Game, the State Fish and Game Commission, and the California State Lands Commission.

Chapter 9 of the certified LCP outlines the Resource Management Program (RMP) for the Treasure Island development. The RMP is intended to implement the Resource Protection Policies set forth in Chapter 3. The Marine Management Plan (MMP) is a component of the RMP. The MMP contains policies and mitigation measures for the protection and enhancement of the marine habitat at Treasure Island.

The appellants assert that the approved development may further degrade the marine life habitat at the subject site and claim that the City has yet to commit to implementation of the RMP. The appellants contend that the Treasure Island Cove is subject to direct pollution impacts from the creek/ocean interface at Aliso Beach, located south of the resort development, and are concerned that the cumulative impacts of the approved development will have additional negative effects on the site.

In their appeal, they state that underwater reconnaissance reveals that the marine habitat adjacent to Treasure Island is in “*ecological collapse*” and that the EIR maintains there is “*a mysterious absence of giant kelp.*” They recommend that the cove be designated an Ecological Reserve to “*mitigate decades of destructive regional development impacts to the inshore habitat.*” Lastly, they urge a redesign of the project’s marine resource component to include a more comprehensive restoration plan for the marine habitat.

The City responds to these contentions by stating that the City has committed to implementing the RMP in both a Development Agreement encompassing the Treasure Island project and with the adoption of CDP No. 99-78. CDP No. 99-78, the CDP that adopted the RMP, was conditionally approved by the City Council on December 1, 2000. In addition, CDP No. 99-79, which approved the designation of a State Marine Park, was conditionally approved at the same hearing. Conditions for these permits include, but are not limited to, the following:

- Compliance with the Treasure Island Marine Resources Management Plan prepared by Coastal Resources Management, July 1999;
- Identification of 39.5-acre Treasure Island Marine Park, including 3.5 acres of rocky shoreline habitat, 5 acres of sand beach and 31 acres of open ocean and reef habitat within an approximately 1,730 ft. long by 1,200 ft. wide stretch of coastline next to the project site;
- Management of marine resources to minimize visitor impacts, including enforcement of no-take regulations, establishment of a signage program, education of the public and resort guests and monitoring the resources to help prevent environmental degradation;
- Cooperation with City to ensure monitoring and policing of marine resources 24 hrs/day, 7 days/week;
- Compliance with all Standard Conditions and Mitigation Measures as identified in the FEIR and as outlined in the Mitigation Monitoring Program; and
- Pay for the cost of all engineers, geologists, archaeologists, paleontologists or other similar authorities or specialists required by the Mitigation Monitoring Program;
- Compliance with all provisions of the Development Agreement, including the public park area maintenance responsibilities;
- Dedicate the public open space and construct the planned public and visitor serving facilities prior to construction of residential development and prior to or concurrently with the private resort development.

CDPs 99-78 and 99-79 were not appealed to the Commission; therefore the City's actions regarding the RMP and State Marine Park Designation are final. The City Manager has indicated that the required funds to start the first component of the approved RMP will be included in the City's budget for the 2000-2001 fiscal year.

However, the project now being appealed does not include assurance that the approved development will conform to and implement the adopted RMP, because neither CDP 99-75 nor CDP 99-76 require the approved development to conform to and implement the adopted RMP as a condition of project approval.

While Project Design Feature (PDF) 4-2 of the FEIR is incorporated as a condition of approval of both CDP 99-75 and CDP 99-76, the PDF only outlines the minimum requirements of a Shoreline Resources Management Plan, and does not specifically reference the RMP as approved by CDP 99-78.

Therefore, the local record does not demonstrate that the project was conditioned at the local level to ensure the protection of marine resources consistent with the adopted RMP, as required by the certified LCP. As such, the Commission finds that the approved project, which does not incorporate the RMP adopted by CDP 99-78, raises a substantial issue of conformance with the certified LCP.

b. No Substantial Issue

The following contentions raise no substantial issue of consistency with the policies and standards set forth in the certified LCP.

Water Quality

Section 3.1.1 of the LCP identifies policies for water quality management for the Treasure Island development. As illustrated below, Policies 7 through 13 pertain to the current appeals:

Policy 3.1.1-7 A Water Quality Management Plan (WQMP) shall be prepared for the LCP Area in accordance with Orange County's Drainage Area management Plan, and LCP Chapter 11.

Policy 3.1.1-8 All drained facilities and erosion control measures within the LCP Area shall be designed and constructed to protect coastal/marine resources in accordance with the Orange County Flood Control District Design Manual and Title 22, "Excavation, Grading and Filling," of the Laguna Beach Municipal Code.

Policy 3.1.1-9 Urban Runoff from the LCP Area shall comply with all existing and applicable Federal, State, and local water quality laws and regulations.

Policy 3.1.1-10 An Erosion Control Plan shall be prepared by a registered Civil Engineer prior to any construction within the LCP area, in accordance with Title 22, "Excavation, Grading and Filling," of the City of Laguna Beach Municipal Code.

Policy 3.1.1-11 A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared by a registered Civil Engineer. This SWPPP shall comply with the State Water Resources Control Board's General Construction Activity Storm Water Permit.

Policy 3.1.1-12 Sediment basins (e.g. debris basins and/or silt traps) shall be installed in conjunction with all initial grading operations and shall be maintained throughout their intended lifetimes to remove sediment from the surface runoff.

Policy 3.1.1-13 As applicable, final designs for grading and excavation projects shall:

- a. *include measures to protect water quality in adjacent areas during construction and maintenance activities;*
- b. *be consistent with Section 404 of the Federal Clean Water Act (formerly Federal Water Pollution Control Act) and Section 10 of the Federal Rivers and Harbors Act of 1899; and*
- c. *not adversely affect water quality or marine habitats.*

In addition, Policy No. 15 of the Flood Control and Hydrology Policies of Section 3.1.2 states the following:

Policy 3.1.2-15 Structural water quality protection measures shall be provided for on-site drainage of paved areas. Structural measures may include oil/water separators, filters, greenbelt strips, and/or other equivalent methods.

The appellants contend that the water quality measures included as part of the Treasure Island project do not incorporate Best Available Technology (BAT). They suggest that the applicant and City implement BAT measures comparable to those utilized at the Santa Monica Urban Runoff Filtration (SMURF) Facility.

Additionally, while the appellants recognize that the project includes a plan to divert the project's nuisance flows, they contend that an agreement between the City and local sanitation district has yet to be reached. They also assert that the project does not address "*compliance with long-range water ration goals and creation of 'new water' sources.*" Lastly, they state that the project can offer a "*meaningful in situ experience as a demonstration project of prudent water management and urban runoff strategies*" and recommend that a monitoring program be implemented to study the effectiveness of the water quality measures.

The City has responded to these contentions by stating, "*the City has the responsibility for sewage treatment, and...our treatment facility has the capacity to process the low flow storm water and the flows from 'first flush' events.*" They also state that Best Management Practices (BMPs) are in fact being implemented as part of the project as the City has required it as a condition of project approval.

The Water Quality Management Plan (WQMP) for Treasure Island was prepared in June 1999 and approved by the City of Laguna Beach as part of the proposed project. Additional water quality measures were also provided prior to the City's final approval of the project and incorporated as Condition No. 25 of CDP 99-75 (Exhibit 17). These measures include dry-weather nuisance flow diversion into the sanitary sewer system and installation of hydrocarbon and sediment separators for the nuisance flow and "first flush runoff" (defined as runoff resulting from the first .75 of an inch of rainfall in the site in a 24-hour period). The City has also agreed to increased street sweeping operations and installation of storm drain inlet upgrades along Coast Highway.

The Commission's water quality specialist has reviewed these water quality measures and agrees that the water quality conditions included as part of the Treasure Island project are in conformance with the policies outlined in the certified LCP. Therefore,

the Commission finds that the approved project raises no substantial issue of consistency with the LCP provisions regarding water quality.

Public Access

Given that the Treasure Island project site is located between the first public road and the sea, a finding must be made that the City's approval of the development is consistent with the public access and recreation policies of Chapter 3 of the Coastal Act, as well as the public access and recreation policies of the certified LCP.

Section 30210 of the Coastal Act states, in pertinent part:

...maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30213 of the Coastal Act states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30252(6) states:

The location and amount of new development should maintain and enhance public access to the coast by... (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

As they apply to the current appeal, the Treasure Island LCP contains the following policies related to public access and recreation:

Policy 4.2.1-1 Lateral and vertical public coastal access and recreational opportunities shall be established within the resort development area and on open space, conservation, and recreation lands proposed for dedication to the public, including the Bluff-top Park, Sand Beach, and Marine Reserve.

Policy 4.2.1-6 Lower cost recreational uses, visitor-serving uses, and public access opportunities have priority over private residential uses.

Policy 4.2.2-1 Continuous opportunities for public upcoast and downcoast observation shall be provided by a continuous walkway and appropriately located overlook within the Bluff-top Park, along the new southerly ramp down to the Sand Beach, along the existing northerly ramp and stairway down to the Marine Reserve, and from various public areas within the Resort Center.

The certified LCP also provides the following circulation policy, which addresses the public pedestrian walkway:

Policy 5.2.2-6 A public pedestrian walkway shall be improved to connect the new public pedestrian walkway adjacent to Coast Highway and the new public parking spaces within the south end of the Bluff-top Park/Resort Center to the oceanfront walkways and major landscaped areas of the Bluff-top Park and, via a new ramp, down to the Sand Beach.

Policy 5.2.2-7 The walkway described in (6) above shall be designed so as to:

- a) be usable by City and/or County beach maintenance and emergency access vehicles, and*
- b) be usable, either by itself and/or in conjunction with a parallel wheelchair ramp of reduced slope, to provide disabled persons...access to the Sand Beach.*

The appellants also contend that the approved project conflicts with the following Design Guideline policy related to public access:

Policy 14.3.2 Provide a safe and aesthetic public access to the beach and water which is inviting to all.

The appellants contend that the approved project does not provide “*lower cost visitor and recreational facilities,*” or sufficient public recreational opportunities. They also object to the lack of picnic benches in the Bluff-top Park area and question the width of the pedestrian path. In addition, one appellant asserts that public parking may be lost if and when Caltrans widens Coast Highway.

The City responded to many of these contentions in their letter of March 10, 2000. They state that the project provides the following facilities for visitor use:

- 275 room hotel
- 5.76 acres of beach that is presently privately owned
- 7.51 acres of public park and open space with about 70 park benches, walking paths and view vantage points
- 70 public parking spaces with City regulated rates
- Four accessways to the beach
- Two public restroom facilities with showers
- A restaurant near the bluff and a second restaurant in the hotel
- A Marine Park with a Resource Management Plan to protect marine resources
- A landscape buffer along the entire frontage of the site that includes a public pathway and a rest stop for pedestrians and cyclists using Coast Highway

In response to the appellants' contentions regarding the width of the pathway, the City states that the path width was established to accommodate emergency vehicles. The City has indicated that they had to negotiate with the Fire Department and local

lifeguards to reduce the departments' original request for a 20' wide road in the same location. The approved project includes an 11' wide concrete path with an approximately 3' wide decomposed granite (DG) adjacent strip. According to the City, the DG strip may be vegetated and is necessary for drainage purposes and for the accommodation of wider emergency vehicles.

The City also contends that the project's parking is *not* located within the Caltrans right-of-way. In fact, all development (including the Scenic Highway Easement) will be located 10' inland of the right-of-way, within the applicant's property line. Therefore, no parking or required landscaping along Coast Highway will be sacrificed if the highway is to be widened at a future date.

The Commission finds that the project, as approved by the City, is consistent with the public access provisions of both the certified LCP and the Coastal Act, as it provides an appropriate distribution of visitor serving and commercial uses at a site that was previously inaccessible to the public. Additionally, the amenities provided in the approved project are in conformance with the Public Access and Recreation Plan illustrated in Figure 10.2-2 of the LCP (Exhibit 18) and outlined in the LCP policies. The approved project provides public park land, public parking facilities and a resort hotel (including guest rooms, ballrooms, function rooms and meeting facilities), and conveys a fee interest in a privately owned sandy beach to the public.

Where the appellants contend that picnic benches are not provided at the Bluff-top Park, the Commission recognizes that the LCP identified the Bluff-top Park as a "passive" facility and never indicated that picnic benches would be provided. The Bluff-top Park will, however, provide benches, walkways and viewing outlooks, as shown on the Landscape Plan provided in Exhibit 4.

In reviewing the public access provisions of the certified LCP in relation to the approved project, the Commission finds that the project is consistent with the policies and standards set forth in both the certified LCP and the Coastal Act. Therefore, the approved project raises no substantial issue of consistency with LCP policies related to public access and recreation and Sections 30210, 30212, 30213 and 30252(6) of the Coastal Act.

Community Character and Design

Chapter 6 of the Treasure Island certified LCP includes land use and design policies for the Resort Development Area. Supplemental design guidelines are also provided in Chapter 14. These are intended to support and complement the Regulations and Site Development Standards of Chapter 11, and "*should be used as qualitative and aesthetic criteria that gives life and character to quantitative zoning regulations and standards.*"

The certified LCP contains the following policies related to community character and design:

Policy 6.2.1-1 The design of the Resort Center Hotel structures shall fall with the level of Coast Highway and the existing topography. Multi-

storied structures, including all projections and appurtenances, shall be varied in vertical and horizontal dimensions so that building heights, setbacks, and site coverages provide visual interest and an interplay of light, shadow, and materials

appropriate to the building forms. The combination of building heights, site coverage, and setbacks should, where possible, break up building mass and create a terraced effect by placing lower structures in front of higher structures.

Policy 6.2.2-2 The Resort Center architecture shall be distinctive and provide a signature statement for the Laguna Beach community—projecting the resort's significance for business meetings and community banquets.

Policy 6.2.2-3 To accommodate the guest rooms and required meeting/banquet space within the vertical and horizontal limits of the sites, the resort shall step down from the level of Coast Highway to the elevation of the Bluff-top Park.

a) The architecture of the Resort Center shall be set back at least 25 feet from the bluff edge, and step down in increments which emulate the three dimensional character of the existing slope.

Policy 6.2.2-11 The architectural character of the Resort Center shall be distinctive and outlined in design guidelines that shall be set forth, at least generally, in the LCP's Implementing Actions Program (Specific Plan).

Policy 14.2.1 ...Throughout the resort, there is an intent to provide a village scale by attention to detail and a general pedestrian orientation.

Policy 14.2.2 The architectures will be a mix of styles and forms drawn from eclectic architectural tradition of Laguna Beach and seaside resort areas.

Policy 14.2.3 ...An emphasis on natural materials, such as wood, tile, stone and cement plaster and a strong relationship between indoor and outdoor spaces is encouraged...

Policy 14.4 The architecture of the Resort Center should provide a distinctive image and blend comfortably with the natural features of the site, including a horizontal and stepped-back design and an abundance of landscaping.

Policy 14.4.2-4 Long continuous rows of buildings should be avoided. The hotel structure should be broken by open spaces, varied roof treatments or staggering of individual units. Buildings that maximize permitted heights should contain elements with heights less than the maximum and incorporate more than the minimum setback.

As specified in the certified LCP, the Design Guidelines of Chapter 14 set forth *“thematic, stylistic and other aesthetic site planning, landscaping and building material vocabulary and criteria to guide resort builders and their architects and engineers during preparation of construction-level design drawings that will be embodied in future coastal development permits and other permit approvals that must be obtained from the City’s Design Review Board, Planning Commission and other decision-making bodies.”* The Commission recognizes that the Design Guidelines are not considered binding policies of the LCP, but a supplemental component that should be used for direction and assistance. As stated in Section 6.1 of the Resort Development Policies, the *“Resort Center design guidelines in Chapter 14 are advisory in nature.”*

As recognized in the findings for the Commission’s approval of the Treasure Island LCP, the Design Guidelines contained in Chapter 14 of the LCP are *“guidelines and not Land Use Plan policies.”* In contrast, the Resort Development Policies of Chapter 6 and the Regulations and Development Standards of Chapter 11 are binding policies and development standards of the LCP. Therefore, the Commission’s responsibility at the appeal stage is to assure that the approved development is in substantial conformance with the design policies specified in Chapter 6 and the Regulations and Site Development Standards included in Chapter 11.

The appellants contend that only one architectural style (Craftsman) has been utilized in the design of the project, whereas the LCP design guidelines note that a *“mix of styles”* will be employed. They also state that terracing of structures is minimal and suggest that the approved project is out of scale and character with surrounding development. Additionally, the appellants indicate that the project presents a continuous frontage along Coast Highway, inconsistent with the design guideline to avoid *“long, continuous rows.”*

The City has responded to these contentions by pointing out that the joint Planning Commission and Design Review Board held eight (8) public hearings prior to project approval. At the conclusion of these hearings, it was determined that the project complies with the LCP policies, development regulations and design guidelines. In reviewing the local record, the Commission notes that the public had ample opportunity at the local level to address their preferences regarding project design.

The Commission recognizes that issues of design are largely subjective and are not a precedential issue of statewide concern. The Commission does not generally question design decisions which are local in nature. In addition, regardless of any issues of conformity with advisory, non-binding guidelines, the project plans are consistent with

the development standards and policies of the certified LCP. Consequently, as the approval conforms with the development standards related to height, bulk, setback and view corridor requirements provided in Chapter 13, the Commission finds no substantial issue exists with regard to the issues of design and community character addressed by the appellants.

Scenic and Visual Resources

As discussed previously, Chapter 9 (Resource Management Program) of the LCP outlines objectives and criteria to implement the policies contained in Chapter 3 (Resource Protection Policies). The appellants challenge conformance with the following RMP objectives as they pertain to coastal views:

- Section 9.1.2-4 Provide and improve the adjacent portion of the Coast Highway Scenic Corridor to protect and enhance the existing public streetscape and views of the site and coastline.*
- Section 9.1.2-5 Provide three reasonable public view corridors through the resort community which while not precluding development within the boundaries of the corridor will require the maintenance of a preponderance of the existing ocean views through a constant-width corridor from residences above the Aliso Creek Plaza Shopping Center, Coast Highway, and Fred Lang Community Park.*

Section 9.5 (Visual and Scenic Resource Protection Requirements) provides implementation measures for the protection of views and scenic resources. As stated above, the LCP requires the provision of three (3) public view corridors through the resort development. The approved project includes these viewing corridors—one in excess of the minimum width required. Viewing opportunities of the coastline are also available throughout the project site.

Section 11.3 (Building Height Regulations and Standards) of the LCP sets forth maximum height envelopes for the Treasure Island development. A review of the project plans reveals that the approved project conforms to these height limitations.

Although some obstruction of existing coastal views will occur, the Commission finds the approved project to be consistent with the visual and scenic resources protection policies and standards of the certified LCP. Therefore, the Commission finds that the contention does not raise a substantial issue of consistency with the certified LCP.

Acreage Inconsistencies

Chapter 8 of the certified LCP outlines the Treasure Island Specific Plan. The Specific Plan Map is provided in Exhibit 2 and summarized in the table on the following page. The Specific Plan table identifies zoning designations (land use categories), planning areas, resort components, gross acreage, percentage of Specific Plan Area, accommodations and maximum residential units.

At this time, the Commission must determine if the approved land use acreages are in substantial conformance with those approved in the LCP. Pursuant to the LCP, an exact comparison is not necessary, so long as minimum public benefits are provided in the approved plan. Section 8.1.3 of the LCP describes the purpose and intent of the Treasure Island Specific Plan. One of the objectives is stated as follows:

Section 8.1.3-4

To maximize the feasibility and success of visitor-serving resort facilities, it is explicitly structured to allow flexibility in terms of the detailed design of the Resort Center and Residential Estates areas. The intent is to enable the implementation of innovative financial and management concepts, and allow for the detailed site plan and architecture to be prepared by the ultimate resort develop/operator—and reviewed and approved by the City—at a final construction level of detail.

TREASURE ISLAND LCP
PART II — IMPLEMENTING ACTIONS PROGRAM

8. SPECIFIC PLAN

FIGURE 8.2-2

SPECIFIC PLAN TABLE
Treasure Island Specific Plan

SPECIFIC PLAN ZONING DESIGNATION (LAND USE PLAN CATEGORY)	PLANNING AREA	RESORT COMPONENT	GROSS ACRES	PERCENT OF SPECIFIC PLAN AREA	ACCOMMODATIONS (KEYS)		MAXIMUM RESIDENTIAL UNITS
					Minimum	Maximum	
CONSERVATION (OS, C&R)	1	Marine Reserve ⁽¹⁾	3.55	12%	0	0	0
OPEN SPACE/ RECREATION (OS, C&R)	2	Sand Beach ⁽¹⁾	2.70	9%	0	0	0
OPEN SPACE/ RECREATION (OS, C&R)	3	Bluff-top Park	6.24	21%	0	0	0
	3a	Top of Bluff (3.00 acres including 0.36 acres of public easement within the Resort Center) ⁽²⁾					
	3b	Coast Highway Scenic Corridor (0.30 acres)					
	3c	Bluff Face (2.94 acres) ⁽¹⁾					
RESORT DEVELOPMENT (RD)	4a	Resort Center Hotel, Resort Villas, Spa, Restaurant(s) and Conference Facilities (8.83 acres) and Residence Villas (1.50 acres)	10.63	35%	200	275	— ⁽³⁾
	4b	Resort Garden (0.30 acres)			0	0	— ⁽³⁾
RESORT DEVELOPMENT (RD)	5	Coast Highway Scenic Corridor and ROW dedication adjacent to Resort Center	1.17	4%	0	0	—
SUBTOTAL — PUBLIC AND VISITOR-SERVING RESORT USES			24.29	81%	200	275	—⁽³⁾
Resort Development (RD)	6	Residential Estates	5.80	19%	0	0	18
TOTAL			30.09	100%	200	275	37

(1) Public Fee Dedication to the City of Laguna Beach.

(2) Total Bluff-top Park Area shall contain a minimum of 3.00 acres of bluff-top not including the bluff-face and including approximately 0.36 acres of easement at the south end of the Resort Center.

(3) The number of Residence Villas shall not exceed 37 minus the number of Residential Estates. If the maximum 18 Residential Estates are built, no more than 19 Residence Villas may be built.

The appellants contend that there is 0.6 acres less of marine reserve, sand beach and bluff face than indicated in the LCP (Exhibit 17). A comparison of the approved project and the LCP produces the following acreages:

	LCP	Approved Project	Difference
Marine Reserve	3.55 acres	3.31 acres	-0.24 acres
Sand Beach	2.70 acres	2.45 acres	-0.25 acres
Bluff Face	2.94 acres	2.83 acres	-0.11 acres
			-0.60 acres

The City responds to this contention by stating that the differences are due to a revised certified topographical survey. While the appellant proposes that the landowner dedicate the area amounts specified in the LCP, this is physically impossible, according to the City. They provide the following explanation in their letter of March 17, 2000:

“Fixed points determine the area boundaries. For instance, the marine reserve and beach areas are areas encompassed from the toe of bluff face slope to mean high tide. If an updated survey shows smaller amount of land areas due to sand elevation shift, then there are physically smaller areas. Additionally, an independent 3rd party engineer hired by the city confirmed that acreage fluctuations between various topographic surveys are common for coastal properties.”

The appellants also assert that none of the additional park area (agreed upon after the adoption of the LCP) was deducted from the private residential acreage. The City has responded to this contention by pointing out that 0.13 acres of park area came out of the acreage originally allotted for the Residential Estates and the Residential Villas (condominiums).

A review of the approved LCP Specific Plan Map and the approved Tentative Tract Map reveal that the Residential Estates and Residential Villas are now slightly smaller than originally approved.¹ It appears as though the only land use acreages that have been reduced in size are the Marine Reserve, Sand Beach, and Bluff Face (for the reasons discussed previously). However, the Commission recognizes that the total public park area has increased by nearly an acre, thereby balancing the amount of land dedicated to public use.

In their appeal, the appellants contend that the area being counted as Residential Estates (Parcel G) shown on the Tentative Tract Map extends beyond the area illustrated in the LCP for that use. The appellants also state that the Residential Villas (condominiums) development exceeds the acreage allowed for that land use, as Parcel G should be counted toward the total condominium area.

¹ As the Tentative Tract Map and Specific Plan Map are broken down differently (i.e. parcels vs. land use categories), it is not possible to compare the acreages with precise accuracy.

They indicate that this area should not be counted as part of the Residential Estates, but instead should be counted toward the Residential Villas (condominiums). As such, they feel Parcel G should remain within the Resort Area planning designation and that the condominiums should be reduced in size to remain within the 1.5 acre limit.

The City states that Parcel G is a landscaped exterior boundary and that there is no requirement that restricts the allocation of this area to the condominium planning area. They assert that the inclusion of this parcel in the area allocated for Residential Estates further limits the available area for private lots. Therefore, no additional structural development will occur as a result of this parcel being considered part of the Residential Estate area. The approved Tentative Tract Map illustrates that the actual condominium development remains within its 1.5 acre allocated area. Therefore, the Commission finds that the adjacent landscaped area does not need to be considered toward the total developable acreage.

Although some minor parcel acreage reallocation has occurred, overall acreages and land use distributions approved by the City are in substantial conformance with those approved in the certified LCP. Additionally, the areas dedicated to public benefit (including those reserved for the Resort, Open Space, Conservation and Recreation) remain in approximately the same location and distribution as originally approved. Therefore, the Commission finds that the project does not raise a substantial issue of consistency with the Treasure Island certified LCP in regard to land use acreage inconsistencies.

Miscellaneous Contentions

The appellants addressed several issues that did not fall into the specific categories discussed previously. Commission staff has reviewed each of these contentions and determined that none raise a substantial issue of consistency with the certified LCP. The following is a brief summary of each contention:

Request for Additional Hotel Development

The LCP does not allow for increased hotel use. The maximum of 275 rooms is being provided by the current project and any increase would raise issue for an LCP amendment.

Limiting Stays at the Resort

The appellant contends that visitor use of the resort (hotel and detached bungalows) is not assured by failure to limit stays. However, the City's Municipal Code allows only transient users. In addition, a condition of the CDP requires limited use of the resort as a hotel facility.

Goff Island

The appellant would prefer the groin not be replaced after removal of the cement slab. However, the LCP requires the construction of a replacement groin at this site. As stated in Chapter 3, Resource Protection Policies, of the LCP:

Policy 3.1.2-18 Virtually all of the existing concrete slab and pier by Goff Island shall be removed to the maximum extent feasible without damaging the surrounding natural resources during the master grading of the other portions of the site by the Landowner/Master Developer. A rock groin/sea wall shall be constructed in an approximate north-south direction connecting the mainland to Goff Island, in order to : a) maintain a stable structure that, in height, length and location, replicates the function of the existing concrete slab (as generally defined in the Coastal Impact Study prepared by Moffat & Nichol, Coastal Engineers, dated December 5, 1997); b) duplicate the natural conditions; and c) stabilize the base of the existing northern access ramp. To the maximum extent possible, any replacement artificial structures, including groins or seawalls, shall be minimized and covered with sand or otherwise treated to provided a reasonably natural appearance.

Therefore, the removal and replacement of Goff Island, as approved by the City, is consistent with the requirements of the certified LCP. Additionally, as a portion of the proposed Goff Island project lies within the Commission's original jurisdiction (below the mean high tide line), a Commission issued CDP is required. The application was received in the South Coast District Office on March 6, 2000 and will be considered at a subsequent Commission hearing.

iv. Invalid Contentions

Not all of the contentions raised by the appellants can be considered valid appeal grounds, as the grounds for an appeal are limited to an allegation that the development does not conform to the certified LCP or the public access policies of the Coastal Act. Many of the appellants' contentions cite project inconsistency with Coastal Act issues unrelated to public access even if the cited Coastal Act sections have not been incorporated into the LCP. These appeals fail to address inconsistency with the policies and standards of the certified LCP, limiting their appeal to consistency with Coastal Act policies that have not been incorporated into the certified LCP. Therefore, appeals that cite only Coastal Act sections and/or do not reference specific LCP policies are considered invalid. These are discussed below.

Inappropriate Application of Coastal Act Sections

The appellants cite multiple Coastal Act sections as grounds for their appeal. However, as these sections were not directly incorporated in the Treasure Island LCP, they cannot be considered valid grounds for contention.

The appellants cite Section 30253 as grounds for their appeal as it relates to landform alteration and grading. Section 30253 states, in pertinent part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The appellants cite Section 30251 as grounds for their appeal as it pertains to community character, design and visual resources. Section 30251 states, in pertinent part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The preceding Coastal Act Sections are not directly incorporated in the Treasure Island certified LCP and therefore, are not valid grounds for appeal of the approved project under 30603 of the Coastal Act. Please note, however, that other appellants have validly raised landform alteration, scenic visual resources and community character issues as they specifically relate to LCP policies and these issues have been analyzed above.

City Enforcement of Permits

Finally, one appellant contends that the City has allowed the fencing off of public beaches for private use and does not enforce parking conditions of CDPs. The City disputes this contention, stating “*The City enforces all permits, including Coastal Development Permits.*” Moreover, this contention involves a claim that violations of previously issued CDPs are occurring elsewhere, and does not pertain to the current development. Therefore, this contention is not a valid ground for appeal of the approved project.